

**UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

United States of America,)	
)	
Plaintiff,)	ORDER SUMMARILY DISMISSING
vs.)	DEFENDANT’S SECTION 2255 MOTION
)	
Jeremiah John Pudwill,)	Case No. 1:06-cr-45
)	
Defendant.)	

Before the Court is defendant Jeremiah John Pudwill’s motion filed pursuant to 28 U.S.C. § 2255. The motion is filed *pro se*. On August 11, 2006, Pudwill pled guilty to one count of possession of a firearm by a convicted felon. On October 5, 2006, Pudwill was sentenced to 37 months of imprisonment.

In his motion filed on July 5, 2007, Pudwill asserts that the federal law prohibiting possession of a firearm by a convicted felon, 28 U.S.C. § 922(g)(1), is unconstitutional as applied to the Defendant. The Court has reviewed the motion as required by Rule 4(b) of the Rules Governing Section 2255 Proceedings. The Court finds that in the Plea Agreement with the Government (Docket No. 15, p. 8, ¶ 23), Pudwill expressly waived his right to bring a Section 2255 motion challenging his conviction or sentence. Such a waiver is fully enforceable. See United States v. Andis, 333 F.3d 886 (8th Cir. 2003); United States v. His Law, 85 F.3d 379 (8th Cir. 1996). Accordingly, Pudwill’s Section 2255 motion (Docket No. 30) is **DISMISSED**.

The Court certifies that an appeal from the denial of this motion may not be taken in forma pauperis because such an appeal would be frivolous and cannot be taken in good faith. Coppedge v. United States, 369 U.S. 438, 444-445, 82 S.Ct. 917 (1962). In addition, based upon the entire record before the Court, dismissal of the motion is not debatable, reasonably subject to a different

outcome on appeal, or otherwise deserving of further proceedings. Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983). Therefore, a certificate of appealability will not be issued by this Court.¹

IT IS SO ORDERED.

Dated this 10th day of July, 2007.

/s/ Daniel L. Hovland

Daniel L. Hovland, Chief Judge
United States District Court

¹The Court of Appeals for the Eighth Circuit has opined that the district courts possess the authority to issue Certificates of Appealability under Section 2253(c). Tiedeman v. Benson, 122 F.3d 518, 522 (8th Cir. 1997).